

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LENA VERN DANDRIDGE

Plaintiffs,

vs.

CIVIL ACTION NO.: 64-14801

SECTION: N(2)

JEFFERSON PARISH SCHOOL BOARD,
et al., Defendants.

JUDGE: KURT D. ENGELHARDT

ORDER

On January 29, 2009, this Court approved the “Amended West Bank Advanced Studies Magnet Plan Pursuant to Paragraph 6 of Consent Order Dated May 14, 2008 and Court Order Entered in Document No. 190 and Request for Expedited Consideration” [hereinafter, “West Bank Magnet Plan”]. This approval was granted from the bench after a fairness hearing and embodied in a written order, the entire and complete text of which reads:

IT IS ORDERED that the West Bank advanced studies magnet plan submitted herein by Defendant Jefferson Parish School Board and docketed as Record Document No. 197 is hereby approved for implementation for commencement of School Year 2009 through 2010; and

IT IS FURTHER ORDERED that this order shall terminate on the date fixed in the Consent Order entered herein by the court on May 14, 2008.

Order of January 29, 2009 (Rec. Doc. 200) [hereinafter January 29th Order].

It has now come to the Court’s attention that Jefferson Parish School Board (“JPSB”) employees and/or counsel have represented the January 29th Order as embodying a ruling by the

Court that from this time forward, students on the West Bank of the Mississippi River must attend magnet schools only on the West Bank, and students on the East Bank of the river only on the East Bank. In fact, the school system has issued an “FAQ” to parents that notes that as a result of the January 29th Order, “the school board has demonstrated to the Court’s satisfaction that West Bank Advanced Studies academies are or will be substantially equal to East Bank advanced studies academies to the extent feasible.” As such, the FAQ concludes, “no student domiciled on the west bank of the river shall be permitted to enroll in an east bank magnet school and no student domiciled on the east bank of the river shall be permitted to enroll in a west bank magnet school” *Id.*

Quite simply, this is a gross mischaracterization of the January 29th Order, and the Court is at a loss to understand how any employee or representative of the JPSB has reached this conclusion. The language quoted by the FAQ is drawn from Paragraph 6 of the Court’s Order of May 14th, 2008, in which the Court decreed that students from the West Bank attending East Bank magnet schools could remain on the East Bank, and vice versa. The full quotation follows:

Upon the entry of an order by the court declaring that west bank magnet schools offer substantially equal educational opportunities as magnet schools situated on the east side of the Mississippi River, no student domiciled on the west bank of the river shall be permitted to enroll in an east bank magnet school and no student domiciled on the east bank of the river shall be permitted to enroll in a west bank magnet school beyond the last grade offered at the magnet school of current enrollment.

Order of May 14, 2008 [hereinafter, “May 14th Order”]. In this language, the May 14th Order simply anticipates something that the JPSB may chose to do *once unitary status has been achieved*. But no order of this Court has declared the magnet program to be unitary, or otherwise suggested that the JPSB may use the river as a dividing line in assigning students to magnet schools. The

January 29th Order, contrary to the FAQ that has come to the Court's attention, was not a declaration that "west bank magnet schools offer substantially equal educational opportunities as magnet schools situated on the east side of the Mississippi River." The Order approving the Amended Magnet Plan contains no such finding of this condition, which is a predicate for unitary status, as noted above.

At the January 29th fairness hearing, it was clear that the *only* plan before the Court dealt not with the magnet system as a whole, but only the West Bank schools.¹ The Court made it abundantly clear that the January 29th Order did not declare the magnet schools to be unitary, but was a step towards the eventual declaration of such status.² In fact, the Court requested, and the parties agreed to, the deletion of language in the original West Bank Magnet Plan that confined magnet students to the side of the river upon which they reside, *see* Rec. Doc. 190 at ¶¶4,5,8,9,12, and 24, and noted that deletion at the fairness hearing.³ The Court has consistently noted that it did not favor any

¹ The Transcript notes:

THE COURT: My understanding, correct me if I am wrong, my understanding is that what we are here today on *relates only to the establishment of the magnet schools on the West Bank* and that pursuant to the Court's January 5th order, there would be forthcoming some type of plan or other order submitted to the court relative to East Bank schools?

MR. PATIN: Yes, that's correct, Judge . . .

Tr. at 4, ll. 4-11 (emphasis added).

² See Tr. at 17, ll. 4-5 ("THE COURT: So I think in that sense, this is a very positive step towards achieving unitary status.") (emphasis added).

³ See Tr. At 15, ll. 18-20 ("THE COURT: [T]he language in those paragraphs that talked about assigning students to a school on that side of the river on which they are domiciled has been removed.")

proposal to “close the river,” and repeated that fact at the hearing.⁴ Finally, in response to a question from a parent, the Court explicitly declared from the bench that a student need not live on the West Bank to attend a West Bank magnet school, and vice versa.⁵

In addition, it is simply not reasonable to interpret the Amended Magnet Plan as a declaration

⁴ The Transcript notes:

THE COURT: In my opinion, and I've told the lawyers this both in telephone conferences and I think I said this last spring, I don't see a Consent Order that says the river is a bright line divider of the parish serving the purpose of executing unitary status. In fact, that would, in my mind, create binary status.

Tr. at 17, ll. 10-14.

THE COURT: With regard to the East Bank/West Bank issue, and I'm going to generally refer that to that as using the river as a dividing line. . . . I still think, and I have said from day one, that using the river as an artificial barrier is problematic . . . for the reasons that I've stated from the get-go on this case.

Tr. at 13, ll. 7-14.

⁵ The Transcript notes:

MS. EDLER: I do have one concern. My friend Kitty, who is sitting back there with the crutches, was advised by Roslyn Math[e]s . . . that her–this child would need to live on the side of the river where that magnet school was for her to come into the magnet school system. That concerns me. It concerns me that the school system is continuing to tell parents that they must reside on that side of the river.

THE COURT: I don't know when that conversation occurred.

MS. EDLER: : That was just now.

THE COURT: I just said what I said on the record, and there a transcript of it, so as far as I'm concerned, as of the few minutes ago when I finally closed my mouth, I think that would not be a correct assertion based upon the Court's ruling and based upon the Amended Advanced Studies Magnet Plan that I have just approved.

Tr. at 20, ll. 2-18.

of unitary status. Throughout, the Amended Magnet Plan notes that the approved West Bank programs “will offer” identical or substantially equal programs and curricula. *See* Amended Magnet Plan at ¶¶ 6, 7, 10, 11, 13, 14 (emphasis added). The Amended Magnet Plan, thus, sets forth the prospective tasks that, if successfully completed, will establish conditions upon which unitary status can, *at some point in the future*,⁶ be declared. The only section of the Amended Magnet Plan that notes that any aspect of the magnet school system is equal is the one concerning school facilities. *Id.* at ¶ 19 *et seq.* and subtitle preceding ¶ 19. Facilities are only one part of the determination of unitary status, and no fair reading of the Amended Magnet Plan suggests the conclusion that the JPSB seems to have drawn—that the January 29th Order was a declaration of unitary status that permits the school system to confine magnet students to their side of the river.

To be sure, the Court noted at the fairness hearing that some new magnet students who reside on the East Bank but who wish to attend a West Bank school (and vice versa) might well have to attend a school on their home side of the river when they enter the magnet program or enter a new magnet school because they have completed their school’s terminal grade. This is primarily because of the constraints of space. The Court noted at the hearing that it hoped students in that situation could be accommodated, but understands that not all students can be so accommodated. But that is a very different matter from incorrect assertions that the river is now to be used as a dividing line for purposes of magnet school assignment pursuant to the Court’s January 29th Order.

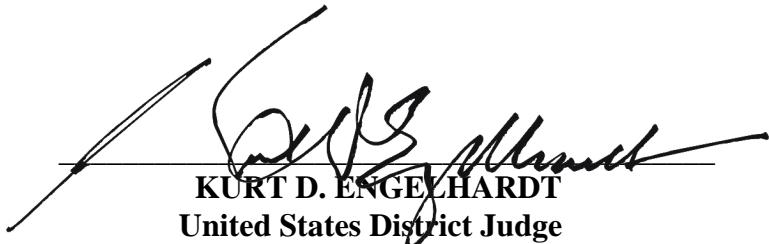
⁶ Further supporting the conclusion that the January 29th Order envisions some future declaration of unitary status is the fact that the Court insisted upon a termination date for the Order. *See* Amended Magnet Plan at ¶ 24. The termination date was explicitly chosen so that the Court would have an opportunity, at that time, to review the operations of the school system pursuant to the Order and, hopefully, find that the precedent conditions set forth in the Amended Magnet Plan had been accomplished, and then declare the system unitary.

As a result of the FAQ document and other assertions brought to the Court's attention, the Court is very concerned that the parties, as well as parents, might misunderstand the scope and effect of the January 29th Order. To that end, **IT IS HEREBY ORDERED** that

(1) Any party or representative of a party who makes representations or assertions contrary to that which is set forth herein, or contrary to the record in these proceedings, or contrary to the transcript of the fairness hearing of January 29, 2009, will **CEASE AND DESIST** from such representation.

(2) Within 72 hours after it appears in the record of this case, the transcript of the January 29, 2009, fairness hearing shall be provided to the public by the JPSB on its website or linked to that website in some accessible fashion.

New Orleans, Louisiana, this 30th day of January, 2009.



KURT D. ENGELHARDT
United States District Judge